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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:25.09.2019

CORAM:

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

CRP. (MD) .No.552 of 2012 (PD)

and

M.P. (MD) .No.1 of 2012

M/s. Ayyan Fire Works Factory,
Private Limited, through its
Managing Director Abiruban,
Geethalaya Buildings,
4, Chairman A.Shanmugam Road,
Sivkasi.

.. Petitioner/Respondent/Plaintiff
Vs.

Govindammal

.. Respondent/Petitioner/Defendant

PRAYER: This Petition filed under Article 227 of the Constitution of India to set aside the fair and decreetal order passed in I.A.No.59 of 2011 in O.S.No.577 of 2009, on the file of the Additional District Munsif, Srivilliputhur, dated 01.11.2011.

For Petitioner : Mr.M.Ashokkumar

For Respondent : Mr.G.Marimuthu

O R D E R

This Civil Revision Petition has been filed against the fair and final order passed by the Court below allowing the application filed by the respondent to file an additional written statement along with the counter-claim.

2. The petitioner filed a suit before the Court below against the respondent seeking for the relief of permanent injunction. The suit was filed on the ground that the petitioner became the owner of the property by virtue of a sale deed executed by one Gurusamy Devar and he has put up a construction in the property and that the respondent is attempting to trespass into the property.

3. The respondent filed a written statement in April 2010, wherein, the respondent had specifically traced her title to the property by virtue of an assignment that was given by the Government



in favour of the respondent's husband. The respondent took a further plea that the petitioner has fabricated documents and has illegally trespassed into the property and constructed a building and the petitioner has absolutely no right over the property.

4. After completion of the pleadings, the issues were framed and the case was taken up for trial. P.W.1 was examined in chief and the case was at the stage of cross-examination of P.W.1. At this stage, the respondent filed an additional written statement and also made a counter-claim in the additional written statement, seeking for the relief of declaration, mandatory injunction and possession. This additional written statement was filed along with an application under Order 8 Rule 9 of the Code of Civil Procedure, seeking for the leave of Court to file the additional written statement along with the counter-claim.

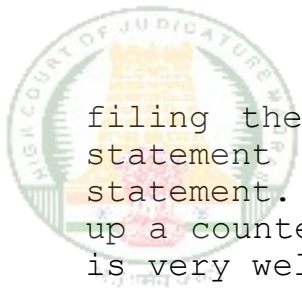
5. The Court below after considering the submissions made on either side had allowed the application on the ground that the counter-claim will have to be considered along with the suit filed by the petitioner, since it also involves the same parties and the same property and rejecting the application will only lead to multicipility of proceedings.

6. The learned counsel appearing for the petitioner submitted that there was no cause of action for the respondent to file the counter-claim, more particularly, after the respondent had filed the written statement in the suit. The learned counsel further submitted that by virtue of the counter-claim, certain properties which are not even the subject matter of the main, suit has been sought to be brought in and the same goes beyond the scope of the counter-claim. The learned counsel submitted that the respondent ought to have filed a separate suit and sought for necessary reliefs and the respondent cannot be allowed to do it by means of setting up counter- claim in the suit filed by the petitioner.

7. Per contra, the learned counsel appearing for the respondent submitted that the counter-claim can be filed even after framing of the issues and by allowing the counter-claim, no prejudice will be caused to the petitioner and in fact, it will only prevent multicipility in the proceedings. The learned counsel in order to substantiate his submissions relied upon the judgment of the Hon'ble Supreme Court in the case of **Vijay Prakash Jarath Vs. Tej Prakash Jarath** reported in **2016 (2) MWN (Civil) 443**.

8. This Court has carefully considered the submissions made on either side and the materials available on record.

9. After amendment of the Code of Civil Procedure, the counter-claim can be set up by the defendant either at the time of



filing the original written statement or by amending the written statement already filed or by filing an additional written statement. In the present case, the respondent has sought to set up a counter-claim by filing the additional written statement. This is very well permissible under the Code of Civil Procedure.

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10. The stage at which the counter-claim can be filed became a subject matter before the Supreme Court in the case of **Vijay Prakash Jarath Vs. Tej Prakash Jarath** referred supra. The relevant portions of the judgment is extracted hereunder:-

"8.It is in these circumstances, that we advert to Order 8, Rule 6-A of the Code of Civil Procedure, which is being reproduced below:

"6-A. Counter-Claim by Defendant - (1) A defendant in a Suit may, in addition to his right of pleading a set-off under Rule 6, set up, by way of Counter-Claim against the claim of the plaintiff, any right or claim in respect of a cause of action accruing to the Defendant against the plaintiff either before or after the filing of the Suit but before the Defendant has delivered his defence or before the time limited for delivering his defence has expired, whether such Counter-claim is in the nature of a claim for damages or not: provided that such Counter-claim shall not exceed the pecuniary limits of the jurisdiction of the Court.

(2)Such Counter-claim shall have the same effect as a Cross-Suit so as to enable the Court to pronounce a final judgment in the same Suit, both on the original claim and on the Counter-Claim.

(3)The Plaintiff shall be at liberty to file a Written Statement in answer to the Counter-claim of the Defendant within such period as may be fixed by the Court.

(4)The Counter-claim shall be treated as a Complaint and governed by the Rules applicable to complaints."

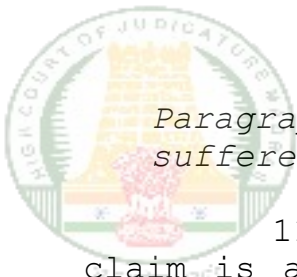
A perusal of Sub-Clause (1) of Section 6-A of Order 8, leaves no room for any doubt, that the cause of action in respect of which a Counter-claim can be filed, should accrue before the Defendant has delivered his defence, namely, before the Defendant has filed a Written statement. The instant determination of ours is supported by the conclusions drawn in *Bollepanda P.Poonacha & anr. v. K.M.Madapa*, (supra), wherein this Court observed as under:



"11.The provision of Order 8, Rule 6-A, must be considered having regard to the aforementioned provisions. A right to file Counter-claim is an additional right. It may be filed in respect of any right or claim, the cause of action therefor, however, must accrue either before or after the filing of the Suit but before the Defendant has raised his defence. The Respondent in his Application for amendment of Written Statement categorically raised the plea that the Appellants had trespassed on the lands in question in the summer of 1998. Cause of action for filing the Counter-claim inter alia was said to have arisen at that time. It was so explicitly stated in the said Application. The said Application, in our opinion, was, thus, clearly not maintainable. The decision of Ryaz Ahmed (supra) is based on the decision of this court in Baldev Singh V. Manohar Singh, 2006 (6) SCC 498."

It is not a matter of dispute in the present case, that cause of action for which the Counter-claim was filed in the present case, arose before the Respondent-Plaintiff filed the Suit (Out of which these Petitions / Appeals have arisen). It is, therefore, apparent that the Appellants before this Court were well within their right to file the Counter-claim.

9.It is quite apparent from the factual position noticed hereinabove, that after the issues were framed on 18.10.1993, the Counter-claim was filed by the Appellants before this Court (i.e. by Defendant Nos.3 and 4 before the Trial Court) almost two and a half years after the framing of the issues. Having given our thoughtful consideration to the provisions relating to the filing of Counter-claim, we are satisfied, that there was no justification whatsoever for the High Court to have declined, the Appellant before this Court from filing his Counter-claim on 17.06.1996, specially because, it is not a matter of dispute, that the cause of action, on the basis of which the Counter-claim was filed by Defendant Nos.3 and 4, accrued before their Written Statement was filed on 11.11.1992. In the present case, the Respondent-Plaintiff's evidence was still being recorded by the Trial Court, when the Counter-claim was filed. It has also not been shown to us, that any prejudice would be caused to the Respondent-Plaintiff before the Trial Court, if the Counter-claim was to be adjudicated upon, along with the main Suit. We are of the view, that no serious injustice or irreparable loss (as expressed in



Paragraph 15 of Bollepanda P.Pooncha's case), would be suffered by the Respondent -Plaintiff in this case."

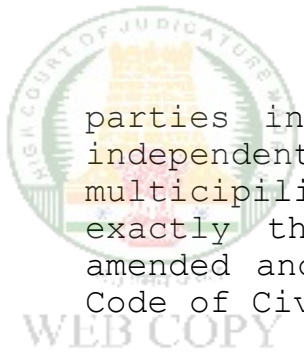
11. From the above judgment, it is clear that a counter-claim is an additional right that has been given to the defendant and this right when claimed must arise out of the cause of action which must have accrued either before or after filing of the suit, but before the defendant has raised his defence.

12. In the present case, it is seen that most of the defence that was raised in the original written statement was reiterated in the additional written statement and therefore by means of filing additional written statement, the respondent has proceeded to set up a counter-claim seeking for certain reliefs against the petitioner. From the above judgment, it is clear that the Hon'ble Supreme Court has now widened this scope of filing the counter-claim and has brought in the test of prejudice and has held that unless serious injustice or irreparable loss is caused to the plaintiff, the Court can always consider and allow the application to set up a counter-claim by the defendant.

13. The plaintiff has traced its title by virtue of a sale deed, which is said to have been executed in their favour by Gurusamy Devar. The defendant has set up her title by virtue of the assignment made by the Government in favour of the husband of the defendant. Therefore, the issue really concerns the title to the property. A comparison of the schedule of property that is shown in the plaint and in the counter-claim corresponds with each other substantially. The second schedule that has been shown in the counter-claim is not a subject matter in the original suit. However, the said property is also sought to be brought in by the respondent on the ground that the plaintiff is attempting to claim right in that property and also preventing the respondent from peacefully enjoying the property.

14. In the considered view of this Court, the very purpose of a counter-claim is to avoid multiplicity of proceedings and that is the reason why the Court has been given a very wide discretion, while considering the application filed by the defendant to set up a counter-claim. It is true that this discretionary jurisdiction must be exercised in a judicious manner and within the statutory limitation. The Court must be careful to see if the additional written statement virtually goes contrary to the earlier written statement or if by filing the additional written statement, attempt is being made to wriggle out of an admission that has been made in the earlier written statement or attempt is being made to substitute one cause of action for another.

15. In the present case, the cause of action that has been projected in the counter-claim, which has been set up in the additional written statement, has accrued even before filing of the suit by the petitioner. It involves the substantial right of the



parties in the property. By driving the respondent to file an independent suit against the petitioner will only lead to multicursipility of proceedings and contradictory judgments. This is exactly the purpose for which the Code of Civil Procedure was amended and right of counter-claim was brought into Order 8 of the Code of Civil Procedure.

16. The actual dispute between the parties concerns only the first item of the property shown in the counter-claim, which is substantially similar to the suit schedule property. This Court does not find sufficient pleadings in the counter-claim and the cause of action for permitting the second item of the property to be made as a part of the counter-claim. Therefore, the counter-claim will have to confine itself only to the first item of the property and counter-claim cannot be allowed to be set up for the second item of the property for which there are no pleadings and there is no cause of action. This is in view of the fact that the counter-claim for all purposes should be treated as a plaint under Order 8 Rule 6-A (4) of the Code of Civil Procedure. The order passed by the Court below will have to be interfered only with regard to the second item of the property shown in the counter-claim.

17. This Court does not find any illegality or infirmity in the order passed by the Court below and the Court below was right in permitting the respondent to set up a counter-claim, since it will enable the Court to decide the right, title and interest over the property as between the same parties. This Court does not find any ground to interfere with the order passed by the Court below and the fair and final order passed by the Court below in I.A.No.59 of 2011, is confirmed insofar as the first item of the property that has been shown in the counter-claim.

18. In the result, the Civil Revision Petition is partly allowed to the extent indicated hereinabove and the Court below is directed to proceed further with the suit and the counter-claim insofar as the first item of the property is concerned and complete the proceedings within a period of three months from the date of receipt of this order. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AD I)

// True Copy //

Sub Assistant Registrar (CS)



To
The Ist Additional District Munsif,
Srivilliputhur.

+1 CC to M/s.G.M.LAW OFFICE, Advocate (SR-89220[F] dated 25/09/2019

+1 CC to M/s.M.ASHOK KUMAR, Advocate (SR-89286[F] dated
25/09/2019)

CRP. (MD) .No.552 of 2012 (PD)

25.09.2019

KK/SAR/18.10.2019/7P-4C/